"Subdivision" for Lease or Rent Testimony to the Joint Committee on Education and Local Government,
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Thank you for the opportunity to testify today. I initiated the legislation to reform Subdivision for Lease or Rent (SLR) during the last session and encouraged Rep. Champ Edmunds to introduce what became HB 494 that passed both houses. After meeting with us, Governor Schweitzer amended this bill and improved it and his version passed the House and the first vote in the Senate but tied on the second vote. Governor Schweitzer originally indicated he'd let the original version become law without his signature but ultimately changed his mind and vetoed HB 494.

I also served on the ad hoc committee of stakeholders attempting to find consensus on reform legislation and the results of this work was presented to this committee during your last meeting. I was the only private landowner representative on this group that worked with the Department of Commerce.

This history is important as it shows that there is broad recognition of the need to reform what is deceptively called "subdivision" for lease or rent. This recognition has become even broader since the January 2012 Attorney General's decision that indicated that certain ambiguous language in Title 76 can legally be interpreted to require landowners to undergo subdivision review in cases where portions of their property (with or without structures) are or could be used for lease or rent.

My comments today are based on the description of the proposed committee bill presented in the 9/10/12 memo to the Committee by Helen Thigpen, Staff Attorney, Legislative Services Division. This draft does 2 very necessary and important things:

1. Makes a clear distinction between what is a "subdivision" and a regulation process that is designed to govern uses that may be made on a parcel.
2. Exempts areas with zoning from this regulation process (this was a consensus point of our ad hoc committee)

The following are additions that in my view should also be included in the Committee bill. These identify limits to the regulations that local authorities may adopt to control uses.

1. 1. There needs to be a grandfather clause to exempt structures and uses that are in existence or in process as of the effective date of the legislation. This was a consensus agreement of our ad hoc committee of stakeholders and was also included in both versions of HB 494 last session. Absent a grandfather clause, local authorities can use this provision to limit or eliminate uses that have been in existence for years and threaten many businesses and legitimate uses. Retroactive elimination of existing uses should not be allowed. There are, for example, thousands of guest cabins for tourists in Montana that currently exist that could be regulated unless grandfathered in the law. Same for multiple storage units, outbuildings and garages of various types used by individuals or businesses. Retroactive enforcement of legally built structures or uses should not be allowed and exactly this is happening in at least a couple of Counties in Montana with the current SLR law.

2. 2. The proposed bill refers to the number of "buildings or units on a tract of record" that would be allowed. This should be changed to something more specific that refers to residences or dwellings or to units that are leased or rented on a commercial basis. The current proposed definition includes structures that are used for the enclosure of property "of any kind" and this is way too broad and unnecessary. On my property, for example we have about 6 separate small buildings (sheds, garages, stalls, barns, office shed, hay and feed storage structures, etc.) that would put us into the category where our use of the property would be unnecessarily vulnerable to regulation of use. None of these are plumbed but several have electricity and 1 has heating. My recommendation is to define "buildings or units" that are counted as those that are leased or rented, and/or those that are plumbed and can be used for human occupancy insofar as they have sleeping facilities and heating or cooling for year-around occupancy. Why should the government care how many storage sheds a person has unless they are leased or rented commercially?

3. 3. Similar to the above, the proposed bill defines "unit" as something with "sewage disposal facilities that may be used separately from another building on the same tract of record." I recommend identifying a unit as something that is in a "separate building" and is a "residence or dwelling" and then defining what is "separate". It would also be reasonable to define a unit as something that is leased or rented so as to exclude separate buildings where family members reside and are not leased or rented.

4. 3. The regulations governing uses are a kind of zoning yet there is no identification in the proposed bill that any kind of public process must be involved that will allow the citizens to have a say in what these regulations look like. This is essential to keep local bureaucrats from just making up regulations based on their internal discussions and without any input from the public. This is exactly what is happening currently with SLR and would continue to happen unless a process is required in the legislation enabling this process to regulate uses. Zoning requires a vote of the people affected and this would be the most appropriate process for such regulations. Short of this there could be a requirement for public hearings and testimony prior to adoption of any regulations governing uses and some kind of appeal process by which citizens can vote to overturn decisions made governing uses.

5. My final point was a consensus point of our ad hoc stakeholders group. This excluded from exemption under SLR structures rented for short periods on which bed taxes are paid. In my view, this exemption should also be given consideration for exemption from the use regulations.

Thank you for your consideration of these suggestions.